IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

LPA NO.573 OF 2002

DATE OF DECISION: 6.12.2006

Tarsem Singh **...PETITIONER**

Mr.K.G.Chaudhry, Advocate

VERSUS

Union of India etc. **...RESPONDENTS**

Mr.Gurpreet Singh, Advocate

CORAM

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE S.S.NIJJAR

1.Whether Reporters of Local Newspapers may be allowed to see the judgment?

2.To be referred to the Reporters or not?

3.Whether the judgment should be reported in the Digest?

4.Whether the judgment should be put on the website of this Court?

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The appellant-Tarsem Singh is aggrieved against the order of the learned Single Judge to the extent that disability pension to which he has

been found entitled to, has been restricted to a period of 38 months, prior to the institution of the writ petition.

The appellant filed the writ petition, out of which this appeal arises, seeking directions for the payment of disability pension. It was claimed by the appellant that he had been discharged from service on medical grounds which was attributable to military service. He joined the Indian Army on 18.9.1976 and served upto 12.11.1983. He remained admitted in the Military Hospital at Jalandhar Cantt. where he was treated for six months and was discharged from service on medical grounds.

It is not disputed by the respondents that the appellant was discharged from the Army as a case of Schizophrenia (295). He was placed in medical category EEE. The stand of the respondents, however, was that the disability of the appellant was a constitutional disorder not connected with the service. Therefore, he was not entitled to the benefit of disability pension.

The learned Single Judge held that the disease of Schizophrenia (295) suffered by the Jawans is attributable to military service. It stood established that when the appellant joined the Army, he was declared fully fit. Periodical medical tests were also conducted and at no point of time, it was found by the Medical Board that the appellant had suffered any constitutional disorder or disease. Keeping in view the nature of duties performed by the Army personnel, it was observed that reasonable inference can always be drawn that disease is attributable to Army service. The writ petition of the appellant was accordingly allowed and a direction was issued

to release the disability pension to the petitioner within three months of the receipt of a copy of the order, failing which the appellant shall be entitled to interest at the rate of 12%. However, the arrears, which were ordered to be paid to the appellant, have been restricted to 38 months prior to the institution of the writ petition. The appellant was also held entitled to get the benefit of disability pension for future on such rates as may be permissible in his case. It was also directed that the appellant shall appear before the Re-survey Medical Board as and when called.

The only contention raised by the learned counsel for the appellant is that the learned Single Judge having come to the conclusion that the appellant was entitled to disability pension, the benefit could not have been restricted to 3 years and 2 months, prior to the filing of the writ petition.

The learned counsel for the respondents, however, has submitted that in view of the long time taken by the appellant after his discharge from Army in approaching the Court, the learned Single Judge has rightly restricted his claim of arrears of pension for a period of 3 years and 2 months.

We have given our thoughtful consideration to the matter. It has not been shown to us that the respondents have filed any appeal against the judgment of the learned Single Judge. Therefore, it is accepted position that the appellant was discharged from Army service on medical grounds which was attributable to Army service rendered by him. The appellant was discharged from the Army as a case of Schizophrenia (295). The respondents have not filed any cross-objection in this appeal with regard to

which we, in any case, have doubts whether cross-objection would be maintainable in a Letters Patent Appeal. However, this question is not required to be gone into as there is no cross-appeal. Learned counsel for the respondents has placed reliance on a judgment of the Supreme Court in the case of Anand Swarup Singh v. State of Punjab, AIR 1972 Supreme Court 2638, in support of his contention that the claim for disability pension has rightly been restricted to a period of three years and two months. The judgment in fact was passed in a civil suit for recovery of arrears of pension. The plaintiff therein was removed from service in 1949 and suit for recovery of arrears of pension was filed in 1965. The Supreme Court held that in the case of a claim for arrears of salary, the period of limitation will be that as laid down in Article 102 of the Indian Limitation Act, 1908 and the plaintiff was held entitled to claim arrears of six years pension. The said case relates to a suit for recovery which was filed by the plaintiff therein after 16 years of his removal from service. The arrears of pension were claimed to be due from 1959.

In the present case, the right to receive disability pension by the appellant stands established and even accepted by the respondents. The right to receive the pension is there due to the disease of schizophrenia (295) attributable to military service. Paragraph 173 of Pension Regulations for the Army Part-I 1961 provides that an individual who has been invalidated from service on account of disability attributable to or aggravated by military service with disability assessed at 20% or more is entitled to disability pension In terms of Rule 14 of the Entitlement Rules

for Casual Pensionary Awards, 1982, it is provided that a disease which had led to an individual's discharge or death would ordinarily be deemed to have arisen in service, if no note of it was made at the time of the individual's acceptance for military service. Therefore, we are of the view that once an Ex-Army personnel is entitled to statutory benefits under the statutory rules of service for the Army Officers, then his claim is not to be restricted to a period of three years and two months from the institution of the writ petition. The payment of pension as is well known, is not a bounty or charity to be paid at the sweet will of the employer. It is not even an ex-gratia payment. It is a postponed payment for the past services rendered by an employee. It is a social welfare measure rendering socio-economic justice to those who in the heyday of their life ceaselessly toiled for the country on the assurance that they would not be left in the lurch in old age. Besides, the constraints which are applicable in a civil suit for the grant of relief would not apply in exercise of the extraordinary writ jurisdiction of this Court under Articles 226/227 of the Constitution of India. We are, therefore, of the opinion that the claim of the appellant for disability pension is not to be restricted to a period of three years and two months prior to the date of filing the writ petition and he would be entitled to the disability pension from the date it actually fell due, in accordance with the statutory provisions.

Consequently, the present LPA is allowed and the order of the learned Single Judge is modified by holding that the appellant shall be entitled to disability pension from the date it fell due, instead of restricting it to a

period of three years and two months from the filing of the writ petition. The respondents shall carry out the necessary calculations and release the arrears of pension to the appellant within three months of the receipt of a certified copy of this order. No costs.

(VIJENDER JAIN)
CHIEF JUSTICE

(S.S.NIJJAR)
JUDGE

6.12.2006
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